1152 1 Single Bench

IN THE HIGH COURT OF JURISDICTION OF CHHATTISGAR AT BILASPUR

M.A. NO. (C) 322 /2006

MEMO FO APPEAL UNDER SECTION 173 OF MOTOR VEHICLE ACT 1988.

APPELLANT:- Anil Kumar Kesharwani,

NON-APPLICANT No 2 S/o –Shankar Lal Kesharwani, Aged - 41 years, R/o – Anil Agency Near Bharatiya Jivan Bima Nigam Road, Magarpara, Bilaspur, District – Bilaspur (C.G.).

P.R. No. 2693 /e Gurukar
Presented by Shri Anil /
dated 12/9/06

VERSUS

RESPONDENTS No 1:- 1. Ku. Satyawati Kashayap, D/o – Geeta Ram Kashayap, Aged about 17 Years. Minor Through Father – Geeta Ram Kashayap, aged about 38 years, son of Lalita Prasad R/O Village Sarvan Devari Police Station Ratanpur Tah & Distt – Bilaspur (C.G.)

Respnodent no. 2 2) Dillip Kumar Kashayap, S/o Shri Ram Narayan @ Jagru Kashyap, Aged about – 36 years. R/O Village Karaihapara, Ratanpur Tah & Distt – Bilaspur (C.G.)

Amount claimed Rs. – 25,50,700/-

Amount awarded Rs. – 25000/- (As interim)

XI-HC-78

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

A.F.R.

मामला क्रमांक M.A. (C) 322 ..... सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	13/11/2006 Shri Hemant Gupta, counsel for the appellant. Heard on I.A. No. 3419/2006 for taking documents on record. Allowed. Heard on admission. This Misc. Appeal is directed against the order dated 26.6.2006 passed by the First Additional Motor Accident Claims Tribunal, Bilaspur, whereby an amount of compensation of Rs.25,000/- was directed to be paid by the appellant under Section 140 of the Motor Vehicles Act, on principle of no fault liability. Briefly stated the undisputed facts are that the appellant herein is the authorized dealer of Sonalika International Tractor at Bilaspur. On 6.11.2005, a Sonalika International Tractor valued at Rs. 3,58,735/- and Trolley valued at Rs. 70,000/- was delivered by the appellant to one Jagdish Prasad Sharma for demonstration purpose after receiving an amount of Rs.35,000/-. It so happened that while the tractor trolley was in custody of Jagdish Prasad Sharma and was being driven by his driver Dilip Kumar Kashyap, near Ratanpur on 9.11.2005, it dashed against Satyawati Kashyap. It is also not in dispute that neither the tractor trolley was insured on the date of accident nor was it registered in the name of Jagdish Prasad Sharma on the ill fated day. It is also not in	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश कमांक	हस्ताक्षर सहित आदेश - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

dispute that remaining consideration was due and unpaid on the date of accident.

The claimant pleaded that she sustained grievous injury i.e. Paraplegia (Traumatic) on the back. The Medical Board certified that 90% disability was caused to Ku. Satyawati Kashyap. In Claim Petition `C.T. No. 161/2005 for compensation an application under Section 140 of the Motor Vehicles Act, 1988 was filed.

Learned First Additional Motor Accident Claims Tribunal, Bilaspur recorded the finding that on 9.11.2005, the Tractor Trolley was in custody of Jagdish Prasad Sharma only for demonstration purpose on his consent and only a sum of Rs. 35,000/- had been paid by him to the authorized dealer i.e. appellant herein. It also recorded the finding that on the basis of the certificate given by the Medical Board permanent disability was caused to Ku. Satyawati Kashyap.

Shri Hemant Gupta learned counsel for the appellant has assailed the impugned order on the ground that delivery of possession and payment of consideration are sufficient to fasten liability on the purchaser on the principle of no fault liability under Section 140 of the Motor Vehicles Act even though on the date of accident, the vehicle was not registered in the name of purchaser. Reliance was placed on *Sanjay Singh Thakur Vs. Sultan Ahmad & others; 1996 M.P.L.J. 83,* wherein it was held that payment of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

consideration accompanied by delivery of possession of motor vehicle completes the transaction of sale and constitutes liability of the purchaser under Section 140 of the Motor Vehicles Act.

Having heard the learned counsel and after perusing the documents as also the case law cited by the learned counsel for the appellant, I am of the considered opinion that this Misc. Appeal deserves to be dismissed in *limine*. The case law cited does not come to the aid of the appellant and is clearly distinguishable as it is not disputed that on the date of accident, only a sum of Rs.35,000/- had been paid and the entire remaining consideration was due. Thus, transaction of sale was not complete on the date of accident since entire remaining consideration was due. Under Section 140 of the Motor Vehicles Act, the liability to pay compensation in respect of any permanent disability arising out of an accident therefore, squarely rests on the appellant who was the owner and authorized dealer of the Sonalika Tractor Trolley in question on the date of accident.

In view of the above, this Misc. Appeal is devoid of any merit and is dismissed at the stage of admission.

M.(C).P. No. 1820/2006, for stay of interim award also stands disposed of.

C.C. as per rules.

Sd/-
Dilip Raosaheb Deshmukh
Judge

KUR